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Honorable Salvador Mendoza, Jr.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

JAMES BLAIS and GAIL BLAIS,

Plaintiffs,

v.

ROSS HUNTER, in his official
capacity of Secretary of Washington
State Department of Children, Youth,
and Families,

Defendant.

NO. 2:20-cv-00187-SMJ

STIPULATED PROTECTIVE
ORDER

STIPULATION

The parties, through their respective counsel of record, stipulate as follows:

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be

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1 warranted. Accordingly, the Parties stipulate to and petition the Court to enter the
2 following Stipulated Protective Order. Neither the Parties' agreement, nor the
3 Stipulated Protective Order are intended to confer blanket protection on all
4 disclosures or responses to discovery; rather, the protection it affords from public
5 disclosure and use extends only to the limited information or items that are
6 entitled to confidential treatment under the applicable legal principles, and it does
7 not presumptively entitle parties to file confidential information under seal.

8 2. "CONFIDENTIAL" MATERIAL

9 "Confidential" material shall include the following documents and
10 tangible things produced or otherwise exchanged:

11 A.) Social security numbers (5 U.S.C. § 552a(b); LCR 5.2a(3)).

12 B.) Personal information in files maintained for clients of public
13 institutions or welfare recipients (42 U.S.C. § 671(a)(8); Wash. Rev. Code
14 § 42.56.230(1); Wash. Rev. Code § 74.04.060);

15 C.) Health care information (Wash. Rev. Code § 70.02.010 (16));

16 D.) Records relating to mental illness and treatment (Wash. Rev. Code
17 § 71.05.390; Wash. Rev. Code § 71.34.340);

18 E.) Credit card numbers, debit card numbers, electronic check numbers,
19 card expiration date, bank, or other financial account numbers. LCR 5.2(a)(4).

20 F.) Personal information about agency employees, appointees, or
21 elected officials that would violate the right to privacy (Wash. Rev. Code
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1 § 42.56.230(3)); See e.g. *Brown v. Seattle Public Schools*, 71 Wash. App. 613
2 (1993).

3 G.) Documents containing information regarding the identity of persons
4 making reports regarding child abuse or neglect, and all files, reports, records,
5 communications, and working papers used or developed in the investigation or
6 provision of protective services are subject to protection under state law (Wash.
7 Rev. Code §§ 26.44.125(6), 13.50.100) and federal law (42 U.S.C.
8 § 5106a(b)(2)(B)(viii-ix)).

9 H.) Documents containing information regarding the identity of persons
10 or families receiving child welfare services, and all files, reports, records,
11 communications, and working papers used or developed in the investigation or
12 provision of protective services are subject to protection under state law (Wash.
13 Rev. Code § 13.50.100) and federal law (42 U.S.C. § 671(8)(a))

14 I.) Other material protected by federal or state statute or regulation or
15 court rule.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential
18 material (as defined above), but also (1) any information copied or extracted from
19 confidential material; (2) all copies, excerpts, summaries, or compilations of
20 confidential material; and (3) any testimony, conversations, or presentations by
21 parties or their counsel that might reveal confidential material. However, the
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1 | protections conferred by this agreement do not cover information that is in the
2 | public domain or becomes part of the public domain through trial or otherwise.

3 | 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 | 4.1 Basic Principles. A receiving party may use confidential material
5 | that is disclosed or produced by another party or by a non-party in connection
6 | with this case only for prosecuting, defending, or attempting to settle this
7 | litigation. Confidential material may be disclosed only to the categories of
8 | persons and under the conditions described in this agreement. Confidential
9 | material must be stored and maintained by a receiving party at a location and in
10 | a secure manner that ensures that access is limited to the persons authorized under
11 | this agreement.

12 | 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 | otherwise ordered by the court or permitted in writing by the designating party, a
14 | receiving party may disclose any confidential material only to:

15 | (a) the receiving party's counsel of record in this action, as well
16 | as employees of counsel to whom it is reasonably necessary to disclose the
17 | information for this litigation;

18 | (b) the officers, directors, and employees (including in house
19 | counsel) of the receiving party to whom disclosure is reasonably necessary for
20 | this litigation, unless the parties agree that a particular document or material
21 | produced is for Attorney's Eyes Only and is so designated;
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1 (c) experts and consultants to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the
6 duplication of confidential material, provided that counsel for the party retaining
7 the copy or imaging service instructs the service not to disclose any confidential
8 material to third parties and to immediately return all originals and copies of any
9 confidential material;

10 (f) during their depositions, witnesses in the action to whom
11 disclosure is reasonably necessary and who have signed the “Acknowledgment
12 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
13 designating party or ordered by the court. Pages of transcribed deposition
14 testimony or exhibits to depositions that reveal confidential material must be
15 separately bound by the court reporter and may not be disclosed to anyone except
16 as permitted under this agreement;

17 (g) the author or recipient of a document containing the
18 information or a custodian or other person who otherwise possessed or knew the
19 information.

20 4.3 Filing Confidential Material. Before filing confidential material or
21 discussing or referencing such material in court filings, the filing party shall
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1 confer with the designating party to determine whether the designating party will
2 remove the confidential designation, whether the document can be redacted, or
3 whether a motion to seal or stipulation and proposed order is warranted. Local
4 Civil Rule 5(g) sets forth the procedures that must be followed and the standards
5 that will be applied when a party seeks permission from the court to file material
6 under seal.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for
9 Protection. Each party or non-party that designates information or items for
10 protection under this agreement must take care to limit any such designation to
11 specific material that qualifies under the appropriate standards. The designating
12 party must designate for protection only those materials, documents, items, oral
13 or written communications that qualify. Prior to filing designated material with
14 the court, the parties must confer to limit designations to only those parts of
15 materials, documents, items, oral or written communications for which protection
16 is not warranted are not swept unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified or that have been made for
19 an improper purpose (e.g., to unnecessarily encumber or delay the case
20 development process or to impose unnecessary expenses and burdens on other
21 parties) expose the designating party to sanctions.
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1 If it comes to a designating party's attention that information or items that
2 it designated for protection do not qualify for protection, the designating party
3 must promptly notify all other parties that it is withdrawing the mistaken
4 designation.

5 5.2 Manner and Timing of Designations. Except as otherwise
6 provided in this agreement (see, e.g., second paragraph of section 5.2(a) below),
7 or as otherwise stipulated or ordered, disclosure or discovery material that
8 qualifies for protection under this agreement must be clearly so designated before
9 or when the material is disclosed or produced.

10 (a) Information in documentary form: (e.g., paper or electronic
11 documents and deposition exhibits, but excluding transcripts of
12 depositions or other pretrial or trial proceedings), the designating party
13 must affix the word "CONFIDENTIAL" to each page of any document
14 containing confidential material. Documents produced in a native format
15 that contain confidential material must be labeled confidential in a manner
16 appropriate to the type of document. Additionally, documents containing
17 information regarding the identity of persons making reports regarding
18 child abuse or neglect is subject to protection under state law (Wash. Rev.
19 Code §§ 26.44.125(6), 13.50.100(7)) and federal law (42 U.S.C.
20 § 5106a(b)(2)(B)(viii-ix)). In order to obtain any of the information listed
21 in Wash. Rev. Code § 13.50.100 the receiving party must obtain a court
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1 order and the court may only issue such an order entered after proper notice
2 was given to the subjects of the confidential records. The court may place
3 restrictions on the disclosure as the court deems proper.

4 (b) Testimony given in deposition or in other pretrial or trial
5 proceedings: the parties must identify on the record, during the deposition,
6 hearing, or other proceeding, all protected testimony, without prejudice to their
7 right to so designate other testimony after reviewing the transcript. Any party or
8 non-party may, within fifteen days after receiving a deposition transcript,
9 designate portions of the transcript, or exhibits thereto, as confidential.

10 (c) Other tangible items: the producing party must affix in a
11 prominent place on the exterior of the container or containers in which the
12 information or item is stored the word "CONFIDENTIAL." If only a portion or
13 portions of the information or item warrant protection, the producing party, to the
14 extent practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. An inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the
17 designating party's right to secure protection under this agreement for such
18 material. Upon correction of a designation, the receiving party must make
19 reasonable efforts to ensure that the material is treated in accordance with the
20 provisions of this agreement.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any party or non-party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 designating party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption
6 or delay of the litigation, a party does not waive its right to challenge a
7 confidentiality designation by electing not to mount a challenge promptly after
8 the original designation is disclosed.

9 6.2 Meet and Confer. The parties must make every attempt to resolve
10 any dispute regarding confidential designations without court involvement. Any
11 motion regarding confidential designations or for a protective order must include
12 a certification, in the motion or in a declaration or affidavit, that the movant has
13 engaged in a good faith meet and confer conference with other affected parties in
14 an effort to resolve the dispute without court action. The certification must list
15 the date, manner, and participants to the conference. A good faith effort to confer
16 requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge
18 without court intervention, the designating party may either schedule a
19 conference call with the court or file and serve a motion to retain confidentiality
20 under LCR 7 (and in compliance with LCR 5(g), if applicable). All parties shall
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1 continue to maintain the material in question as confidential until the court rules
2 on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
4 PRODUCED IN OTHER LITIGATION

5 If a party or party's counsel is served with a subpoena or a court order
6 issued in other litigation that compels disclosure of any information or items
7 designated in this action as "CONFIDENTIAL," they must:

8 (a) promptly notify the opposing counsel in writing and include
9 a copy of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena
11 or order to issue in the other litigation that some or all of the material covered by
12 the subpoena or order is subject to this agreement. Such notification shall include
13 a copy of this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to
15 be pursued by the designating party whose confidential material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has
18 disclosed confidential material to any person or in any circumstance not
19 authorized under this agreement, the receiving party must immediately (a) notify
20 in writing the designating party of the unauthorized disclosures, (b) use its best
21 efforts to retrieve all unauthorized copies of the protected material, (c) inform the
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1 person or persons to whom unauthorized disclosures were made of all the terms
2 of this agreement, and (d) request that such person or persons execute the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
4 Exhibit A.

5 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 The parties stipulate to entry of an order pursuant to Fed. R. Evid. 502(d).
8 When a producing party gives notice to receiving parties that certain
9 inadvertently produced material is subject to a claim of privilege or other
10 protection, the obligations of the receiving parties are those set forth in Fed. R.
11 Civ. P. 26(b)(5)(B). Pursuant to Fed. R. Evid. 502(d), disclosure of privileged
12 information shall not constitute a waiver of attorney-client privilege or work
13 product protection in this litigation or in any other federal or state proceedings.
14 The parties have conferred on an appropriate non-waiver agreement and order
15 under Fed. R. Evid. 502 or express “claw-back” agreement. To facilitate the
16 production of discovery, the parties agree to a claw-back provision as follows:

17 If information is produced in discovery that is subject to a claim of privilege or
18 of protection as trial-preparation material, and/or is of a confidential nature
19 because of privacy interests involved or other legal protections, the party making
20 the claim may notify any party that received the information of the claim and the
21 basis for it. If the receiving party (regardless of whether he or she has been
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1 notified) notices that a privileged, protected, and/or confidential document has
2 been disclosed, the receiving party will place that document into a file without
3 reading further. After being notified, or after noticing the document that is
4 privileged, protected, and/or confidential, the receiving party must promptly
5 return, sequester, or destroy the specified information and any copies it has and
6 may not use or disclose the information until the claim is resolved. A receiving
7 party may promptly present the information to the court under seal for a
8 determination of the claim. If the receiving party disclosed the information before
9 being notified, it must take reasonable steps to retrieve it. The producing party
10 must preserve the information until the claim is resolved.

11 10. PRIVILEGE LOGS

12 The parties agree that privilege logs shall be provided on a rolling basis
13 simultaneously with each disclosure. The privilege log shall include a unique
14 identification number for each document, the basis for the claim (attorney-client
15 privileged and/or work product protection), and the authority for the basis of the
16 claim. In addition, the privilege log should identify the document type, page
17 count, date on the face of the document, document title/email subject; author,
18 recipient, cc and bcc. For string emails the parties agree to provide all named
19 individuals. Should the parties provide insufficient information for the purpose
20 of evaluation of the privilege claim asserted, the receiving party may request
21 additional information consistent with the Fed. R. Civ. P.
22

11. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material. The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, AND PRESENTED BY COUNSEL OF RECORD this 1st day of October 2020.

ROBERT W. FERGUSON
Attorney General

By: s/ Jeffrey C. Grant

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ORDER

Based on the Parties' Stipulation, it is

ORDERED that the Parties' proposed Stipulated Protective Order is adopted and shall be in effect in case. It is further

ORDERED that, pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privileged applicable to those documents, including the attorney client privilege, attorney work product protection, or any other privilege or protection recognized by law.

DATED this _____ day of October 2020.

SALVADOR MENDOZA, JR.
United States District Judge

Presented by:

ROBERT W. FERGUSON
Attorney General

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Western District
of Washington on _____ in the case of *Blais v. Hunter*,
No. 2:20-cv-00187-SMJ. I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Western District of Washington for the purpose of enforcing the
terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

Date: _____

City and State where sworn and signed:

Printed name: _____